IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7068 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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ACCOUNTANT GENERAL (ACCOUNTS & ENTITLEMENT), GUJARAT

Versus

CONSUMER DISPUTES REDRESSAL FORUM

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Appearance:

MR KETAN A DAVE for Petitioner

NOTICE SERVED for Respondent No. 1-2

MR KP RAWAL, AGP for Respondent No. 3

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CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 04/12/2004

ORAL JUDGEMENT

The petitioner is the Accountant General (Accounts & Entitlement), Indian Audit and Accounts

Department and the present petition is filed challenging the order and judgment dated 8th October, 1993 passed by the Consumer Disputes Redressal Forum, District Amreli in Complaint Case No.105 of 1992 and judgment and order dated 29th April, 1994 passed by the said Forum in Execution Application No.1 of 1994.

2. It is the case of the petitioner that the District Forum, Amreli, vide its order dated 8th October, 1993, has directed that certain G.P.F. balance amount of the complainant shall be transferred to A.J. (Administration of Justice) Series Account at Rajkot alongwith 15% interest from the date of the complaint. The said District Forum has also passed an order on 29th April, 1994 directing the petitioner to implement the earlier order dated 8th October, 1993 within 15 days, failing which the petitioner shall undergo one month's imprisonment and to pay fine of Rs.2,000/-.

3. The main challenge in the petition against these two impugned orders is that the dispute raised by the original complainant/present respondent no.2 before the District Forum cannot be said to be consumer dispute within the meaning of Section 2(e) of the Consumer Protection Act, 1986. It is also submitted in the petition that the activity of the Accountant General cannot be said to be services within the meaning of Section 2(o) of the Act. It is further submitted that the subject matter of the complaint was pertaining to the question of transfer of G.P.F. balance. This activity is not undertaken by the Accountant General for any consideration. Government employees are not taking benefit of the Accountant General's services or G.P.F. service by paying any consideration and in this view of the matter, the District Forum had no jurisdiction to deal with the complaint no.105 of 1992 filed by the original complainant/present respondent no.2. It is, therefore, submitted that both the orders passed by the District Forum are void and without jurisdiction. It is also submitted that even on merits, there was no just and proper reason to pass such orders as the G.P.F. balance in question was already transferred by the petitioner's office to the A.J. series Account on 22nd September, 1993, i.e. much before the impugned original order was passed by the District Forum. It is also submitted that the judgment and order dated 29th April, 1994 was also not warranted for the simple reason that what was directed by the District Forum was already complied with by the petitioner prior to passing of the judgment and order dated 8th October, 1993. The amount in question was transferred with interest at the rate of 12%.

However, the District Forum has directed to transfer the said amount at the rate of 15%. In this regard, it was submitted that the rate of interest was prescribed as per G.P.F. Rules and the said interest amount was already transferred to the A.J. Series Account.

4. Considering the above facts, a prayer was made in the petition that both the orders are required to be quashed and set aside.

5. This court had admitted the petition on 23rd May, 1994 and interim relief was granted staying the impugned orders. Despite service of notice, no affidavit-in-reply was filed on behalf of the respondents. The averments made in the petition have gone unchallenged.

6. After having gone through the contents of the petition and grounds raised therein as well as the impugned orders, this court is of the view that the District Forum has exceeded its jurisdiction in passing the impugned orders. By no stretch of imagination, it can be said that the original complainant/present respondent no.2 was consumer within the meaning of Section 2(e) of the Act or the services rendered by the petitioner can be termed as services within the meaning of Section 2(o) of the Act. Such an activity undertaken by the petitioner cannot be said to be an activity for consideration. Even otherwise, the order has already been complied with by the petitioner and hence, there was no necessity to pass the impugned orders on 8th October, 1993 as well as on 29th April, 1994. It is true that against the order dated 8th October, 1993, the petitioner could have approached the Consumer Disputes Redressal Commission as the Act itself provides an efficacious alternative remedy. However, in the present petition, an averment was made to the effect that at the time when the petition was filed, the post of Chairman of Gujarat State Consumer Disputes Redressal Commission was vacant and hence, it was not possible to seek any appropriate order from the State Commission. Considering this aspect, the petition was admitted in 1994 and now, after the expiry of the period of 10 years, it is not just and proper to direct the petitioner to avail the alternative remedy especially when the impugned order is without jurisdiction and the grievance of the original complainant/present respondent no.2 is substantially redressed.

7. Taking overall view of the matter and considering the facts and circumstances of the case, this court finds substance and merits in the petition and hence, the

impugned orders are quashed and set aside. The petition is allowed. Rule is made absolute without any order as to cost.

( K.A. Puj, J. )

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